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Attorneys for Third Party Respondent
EXP PHARMACEUTICAL SERVICES CORP.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PHARMACEUTICAL INVENTORIES, INC.
d/b/a PHARMACEUTICAL RETURNS
SERVICE,

Plaintiff,

v.

MICHAEL ZACCARO and RETURNS R US
INC. d/b/a PHARMA LOGISTICS, LTD.,

Defendants.

CASE NO. 07-MC-80231-SBA (MEJ)

**STIPULATION AND [PROPOSED] ORDER
REGARDING DEFENDANT MICHAEL
ZACCARO'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS FROM
THIRD PARTY EXP PHARMACEUTICAL
SERVICES CORP.**

Date: n/a
Time: n/a
Courtroom: B, 15th Floor
Judge: Hon. Maria-Elena James

STIPULATION

WHEREAS,

On or about July 13, 2007, defendant Michael Zaccaro ("Zaccaro") served a subpoena upon EXP Pharmaceutical Services Corp. ("EXP"), a non-party in the underlying action pending in the United States District Court for the Northern District of Illinois;

WHEREAS,

The subpoena directed EXP to produce certain documents and designate a witness to testify regarding the authenticity of the documents it produced;

WHEREAS,

EXP subsequently complied in part with the subpoena by producing a subset of the documents sought by Zaccaro, but objected to production of certain other relevant documents;

WHEREAS,

The parties met and conferred in an attempt to resolve their dispute regarding production of the remaining documents sought by the subpoena but were unable to do so;

WHEREAS,

On October 1, 2007, Zaccaro moved for an order under Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure seeking to compel EXP to produce the documents at issue and requiring EXP to designate a witness for deposition who could verify that the documents EXP produced are genuine business records of the company;

WHEREAS,

EXP maintained its objection to production of the documents sought by Zaccaro's motion and, on October 16, 2007, filed a brief and supporting evidence in opposition to Zaccaro's motion;

WHEREAS,

Upon the Court's referral of Zaccaro's motion to the Honorable Maria Elena-James, the motion was ordered taken off calendar and the parties were ordered to further meet and confer regarding the motion;

1 WHEREAS,

2 The parties met and conferred and reached agreement on a procedure that the parties
3 believe will obviate the need for further motion practice;

4 WHEREAS,

5 Pursuant to the agreement reached by the parties, in lieu of producing the documents
6 sought by Zaccaro in his motion to compel and in satisfaction of the subpoena:

7 1. EXP will provide to Zaccaro a declaration signed by its Chief Executive Officer,
8 Gus Changaris, that describes the 12 categories of screen prints sought by Zaccaro and indicates
9 how EXP's software system fulfills the general functionality identified in those categories, as
10 applicable. The declaration shall be in substantially the same form as the unsigned declaration
11 provided to counsel for Zaccaro on November 20, 2007;

12 2. EXP will produce Mr. Changaris for a deposition at which he will testify about
13 the twelve categories of information set forth in his declaration and authenticate and describe the
14 nature of the documents previously produced by EXP;

15 3. The declaration of Mr. Changaris will be marked "HIGHLY CONFIDENTIAL,
16 ATTORNEY'S EYES ONLY, CONFIDENTIAL INFORMATION OF THIRD PARTY EXP
17 PHARMACEUTICAL SERVICES, CORP." pursuant to a Restricting Order issued in the
18 primary proceeding (Northern District of Illinois);

19 4. The Restricting Order will apply to EXP with the following modifications:

20 a. Any party seeking to disclose information that EXP designates "HIGHLY
21 CONFIDENTIAL: ATTORNEYS' EYES ONLY ("EXP's Confidential Information") to an
22 independent consultant or expert is required to disclose to EXP the identity of the independent
23 consultant or expert to whom the information is being disclosed;

24 b. EXP shall be given a copy of the Restricting Agreement signed by any
25 independent consultant or expert that receives EXP's Confidential Information;

26 c. The identity of the independent consultant or expert shall be disclosed
27 only to EXP and not to any other party in the Underlying Litigation; and

28 d. The disclosure of the identity of the independent consultant or expert to

1 EXP shall not constitute a waiver of the work product privilege.

2 NOW, THEREFORE,

3 The parties hereby STIPULATE that in lieu of producing the documents sought by
4 Zaccaro in his motion to compel and in satisfaction of the subpoena:

5 1. EXP will provide to Zaccaro a declaration signed by its Chief Executive Officer,
6 Gus Changaris, that describes the 12 categories of screen prints sought by Zaccaro and indicates
7 how EXP's software system fulfills the general functionality identified in those categories, as
8 applicable. The declaration shall be in substantially the same form as the unsigned declaration
9 provided to counsel for Zaccaro on November 20, 2007;

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11 the twelve categories of information set forth in his declaration and authenticate and describe the
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15 PHARMACEUTICAL SERVICES, CORP." pursuant to a Restricting Order issued in the
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17 4. The Restricting Order will apply to EXP with the following modifications:

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22 b. EXP shall be given a copy of the Restricting Agreement signed by any
23 independent consultant or expert that receives EXP's Confidential Information;

24 c. The identity of the independent consultant or expert shall be disclosed
25 only to EXP and not to any other party in the Underlying Litigation; and

26 d. The disclosure of the identity of the independent consultant or expert to
27 EXP shall not constitute a waiver of the work product privilege.

28

1 Dated: January 4, 2007

Respectfully submitted,

2 LATHAM & WATKINS LLP

3
4 By: /s/
John D. Minton

5 Attorneys for Defendant
6 MICHAEL ZACCARO

7 Dated: January 4, 2007

Respectfully submitted,

8 MYERS, HAWLEY, MORLEY, MYERS &
9 MCDONNELL

10 By: /s/
Paul I. Myers III

11 Attorneys for Third Party Respondent
12 EXP PHARMACEUTICAL SERVICES CORP.

13
14 Filer's Attestation: Pursuant to General Order No. 45, § X(B), I attest that concurrence in
15 the filing of this document has been obtained from its signatory.

16 Dated: January 4, 2007

17 /s/
John D. Minton

18
19 **[PROPOSED] ORDER**

20 The Court having considered the parties' stipulation, and good cause appearing, IT IS
21 HEREBY ORDERED that in lieu of producing the documents sought by Zaccaro in his motion
22 to compel and in satisfaction of the subpoena:

23 1. EXP will provide to Zaccaro a declaration signed by its Chief Executive Officer,
24 Gus Changaris, that describes the 12 categories of screen prints sought by Zaccaro and indicates
25 how EXP's software system fulfills the general functionality identified in those categories, as
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14 independent consultant or expert that receives EXP's Confidential Information;

15 c. The identity of the independent consultant or expert shall be disclosed
16 only to EXP and not to any other party in the Underlying Litigation; and

17 d. The disclosure of the identity of the independent consultant or expert to
18 EXP shall not constitute a waiver of the work product privilege.

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20
21 DATED: _____

22
23 _____
24 The Honorable Maria-Elena James
25
26
27
28